IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1938 OF 2004

Girish Subhash Mulay & Ors. .. Applicants.
Vs.
Asmita Girish Mulay & Ors. .. Respondents.

Mr.Nitin Jamdar for the applicants.
Mrs.Indrayani Koparkar for respondent no.1.
Mr.R.Y.Mirza APP for respondent no.2.

CORAM : D.B.BHOSALE, J.

DATED : 25TH AUGUST, 2004

P.C.:

. Heard Mr.Jamdar, learned counsel for the applicants, Mrs.Koparkar, learned counsel for respondent no.1 and Mr.Mirza, learned A.P.P. for respondent no.2.

2. The applicants have filed this application under section 482 of Criminal Procedure Code seeking quashing of the criminal proceedings filed in the court of Judicial Magistrate, First Class, No.4, Pune bearing R.C.C.No.235 of 2002. The complaint was filed by respondent no.1 - wife against all the applicants on 27.8.2002 under sections 498, 506, 504, 323 read with 34 of Indian Penal Code. Applicant no.1 - husband and respondent no.1 - wife are present in the court.

They have approached this court seeking quashing on the ground that they have amicably settled the dispute and that the respondent-wife does not desire to prosecute the complaint filed by her. Since the offence is non-compoundable they have filed the instant application for quashing of the said criminal complaint.

3. Mr.Jamdar, learned counsel for the applicants, placed heavy reliance upon the judgment of the apex court in **B.S.Joshi & Others Vs. State of Haryana and Anr. 2004(1) Bom.C.R.(Cri.) 93** and contended that since applicant no.1 and respondent no.1 have resolved the dispute and decided to seek consent divorce, no purpose would be served by proceeding with instant proceedings since under any circumstances it would not end into their conviction. Mrs.Koparkar, learned counsel for respondent no.1 - wife supports the contentions urged by Mr.Jamdar.

4. I perused the complaint, the consent pursis and other material placed before me. On facts, it was noticed that there was no reasonable likelihood of the applicants being convicted of the offence.

It is clear from the consent pursis dated 29.9.2003 filed in the family court and the pursis filed by the complainant on 16.10.2003, before the learned Magistrate duly signed by the parties and their respective advocates, the respondent-wife would not support the imputations made in the complaint. In such eventuality, in my opinion, there would be no chances of conviction. Therefore, it would not be proper to decline to exercise powers of quashing on the ground that it would be permitting the parties to compound non compoundable offence as held by the apex court in **B.S.Joshi's case** (supra). The apex court in paragraph 11 and 15 held thus:

> "11. In (Madhavrao Jiwajirao Scindia and Others V.Sambhajirao Chandrojirao Angre and Others), 1988(2) Bom.C.R.232 : 1988 (1) S.C.C.692: A.I.R. 1988 S.C.709, it was held that while exercising inherent power of quashing under section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an

> ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case also quash the proceedings".
>
> "15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or F.I.R. or complaint and section 320 of the Code does not limit or affect the powers under section 482 of the Code".

. In view of this, in my opinion, this is a fit case to exercise inherent powers under section 482 of Criminal Procedure Code to quash criminal proceedings arising from the complaint bearing R.C.C.No.235 of 2002. In the circumstances I pass the following order:

. R.C.C.No.235 of 2002 filed by the respondent-wife in the court of Judicial Magistrate, First Class, No.4, Pune stands quashed

and set aside. This application is, accordingly, disposed of.

(D.B.Bhosale, J.)